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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Eligibility for the Specialized) GN Docket No. 94-90
Mobile Radio Services and Radio)
Services in the 220-222 MHz Land)
Mobile Band and Use of Radio)
Dispatch Communications)

MOTION TO ACCEPT LATE-FILED COMMENTS

Pursuant to Section 1.41 of the Commission's rules (47 C.F.R. § 1.41), the Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits this motion requesting the Commission to accept the attached comments of CTIA, which are filed one day after the scheduled October 5, 1994 filing date.

To ensure that no party is disadvantaged by this late filing, CTIA will serve in a timely manner each party who filed comments in this proceeding on October 5, 1994. Service will be made by first-class U.S. mail, postage pre-

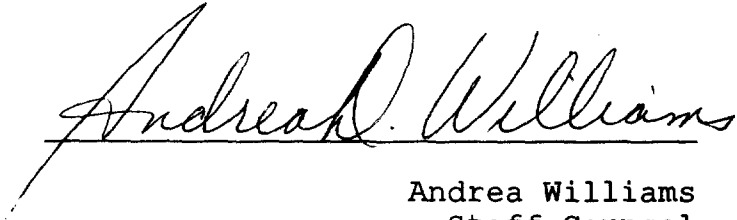
¹ CTIA is a trade association whose members provide commercial mobile services, including over 95 percent of the licensees providing cellular service to the United States, Canada, Mexico, and the nation's largest providers of ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry.

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paid. In the interest of developing a complete and accurate record in the above-captioned proceeding, CTIA respectfully requests that the Commission grant this motion.

Respectfully submitted,

A handwritten signature in cursive script, reading "Andrea Williams", is written over a horizontal line. The signature is fluid and elegant, with the first letter of each word being capitalized and prominent.

Andrea Williams
Staff Counsel

1250 Connecticut Avenue, NW, Suite 200
Washington, D.C. 20036

October 6, 1994

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

**Michael F. Altschul
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October 6, 1994

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SUMMARY

The Cellular Telecommunications Industry Association ("CTIA") strongly supports the Commission's proposals to eliminate the prohibition on the provision of dispatch service by common carriers and to eliminate the cross-ownership restrictions that prohibit wireline telephone companies, and their wireless affiliates, from holding SMR licenses.

In amending Section 332(c) of the Communications Act, Congress established regulatory parity as the standard for the development of a ubiquitously competitive wireless industry. The FCC has concluded that the public is best served by a broadly defined CMRS market where providers of similar wireless services are free to use their licensed spectrum to introduce new services and technologies to consumers. CTIA maintains that the common carrier dispatch prohibition and the cross ownership restriction on wireline telephone companies, and their wireless affiliates, are unnecessary. Such restrictions only can hinder the regulatory symmetry which Congress envisioned and impede the development of the wireless industry.

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**COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits its comments in the above-captioned proceeding.² CTIA supports the Commission's proposals to eliminate the prohibition on the provision of dispatch service by common carriers and to eliminate the cross-ownership restrictions that prohibit wireline telephone

¹ CTIA is a trade association whose members provide commercial mobile services, including over 95 percent of the licensees providing cellular service to the United States, Canada, Mexico, and the nation's largest providers of ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry.

² *In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications*, GN Docket No. 94-90, Notice of Proposed Rule Making, FCC 94-202, (Aug. 11, 1994), 59 Fed. Reg. 42,563 (Aug. 18, 1994) ("Notice").

companies, and their wireless affiliates, from holding SMR licenses.

I. Introduction

Much has been written in the past few weeks lamenting the failure of the 103rd Congress to enact legislation to rewrite the Communications Act of 1934. Often overlooked are the 1993 Budget Act amendments that rewrote Section 332(c) of the Act and changed the way wireless services are regulated. In its rewrite of Section 332(c), Congress recognized that the traditional approach to the regulation of wireless services actually impeded the development of robust competitive markets. To encourage the introduction of new technologies and services, Congress established regulatory parity as the touchstone for the development of a broadly competitive wireless industry.

The FCC also has recognized that its previous rules were an impediment to the development of a competitive wireless industry, and has endorsed the principles of regulatory parity and broad competition in its recent Orders implementing these new provisions of the Communications Act.³ In so doing, the

³ *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, GN Docket No. 93-252, FCC 94-31, 9 FCC Rcd 1411 (1994) ("Second Report and Order"); *Third Report and Order*, FCC 94-212, (released September 23, 1994) ("Third Report and Order"). The Commission actually began broadening its rules for wireless competition before Congress had acted. See *Fleet Call, Inc., Memorandum Opinion and Order*, 6 FCC Rcd. 1533 (1991) (authorizing "enhanced" SMR

Commission has replaced old rules that served to protect licensees from competition with a new set of rules. These rules recognize that the public will be served best by a broadly defined CMRS market where providers of comparable services are free to use their licensed spectrum to introduce new services and technologies and to fully contest the services offered by their competitors.

In the context of these dramatic changes to the regulatory landscape, the instant rule making represents one of the remaining loose ends the Commission must address to complete its work of creating a competitive wireless industry. The 1993 Budget Act provides that the Commission can terminate the restriction on common carriers' provision of dispatch if "such termination will serve the public interest."⁴ CTIA submits that if it is permissible for a reclassified commercial mobile service provider, such as an ESMR to provide dispatch service, then it should be equally permissible for

service); *SMR Co-Channel Short Spacing*, PR Docket No. 90-34, Report and Order, 6 FCC Rcd. 4929 (1991) (adopting short spacing rules for SMRs); *Elimination of SMR End User Licensing*, PR Docket No. 92-79, Report and Order, 7 FCC Rcd. 5558 (1992) (eliminating end user SMR licenses).

⁴ See 47 U.S.C. § 332(c)(2) (1994); H.R. Rep. No. 213, 103d Cong., 1st Sess. 492 (1993) ("Conference Report") ("this section authorizes the FCC to decide whether all common carriers should be able to provide dispatch service in the future.").

all similarly regulated service providers, including cellular carriers.

II. ALL CARRIERS SHOULD BE ABLE TO PROVIDE DISPATCH SERVICE WITHOUT RESTRICTION

CTIA strongly supports the Commission's proposal to eliminate the prohibition on the provision of dispatch service by common carriers. Allowing all CMRS licensees to provide dispatch service will allow the marketplace to "shape the development and delivery of mobile services."⁵

A. Regulatory Parity Requires the Elimination of the Common Carrier Dispatch Prohibition

Under the current regulatory scheme, ESMRs are able to provide "mobile telephony, dispatch service, and paging service" without restriction.⁶ Conversely, traditional common carriers are precluded from offering dispatch services directly.⁷ While cellular carriers are allowed to provide dispatch-like communications by routing traffic through their switch, direct communication between a dispatcher and end-users is prohibited.⁸ Thus, cellular carriers are not

⁵ *Third Report and Order* at ¶ 12.

⁶ *Id.* at ¶ 75.

⁷ 47 U.S.C. § 332(c)(2) (1994). See also *Notice* at ¶ 12.

⁸ *Notice* at 12. Cellular carriers currently are able to provide switched "dispatch" service under the Commission's rules. See 47 C.F.R. § 22.930 (provides cellular operators with service flexibility); 47 C.F.R.

permitted the same flexibility to use their spectrum to meet their customers' needs that the Commission's rules afford SMR and ESMR licensees.⁹

Removing the dispatch restriction will allow cellular, PCS, and ESMR licensees to offer "one-stop shopping" to meet the wireless communications needs of any customer. In fact, Dial Page and CenCall, two ESMR licensees, have advanced such a vision.¹⁰ While some companies can offer customers this same range of services (if, for example, they hold both SMR and cellular licenses in the same market), the current rules

§ 22.2 (defines dispatch communication to include communications that are transmitted "between a dispatcher and one or more land mobile stations, directly through a base station without passing through the mobile telephone switching facilities"). See also, *In the Matter of Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, GEN Docket No. 87-390, Report and Order, 3 FCC Rcd 7033, 7043 at ¶ 77 (1988). Thus, CTIA is requesting that the new rules permit all commercial mobile radio service providers to offer "traditional," i.e., non-switched, dispatch service.

⁹ This rule, which is based on the pre-Budget Act language of § 332(c), encapsulates the folly of attempting to define permissible activities by dictating a technology or serving arrangement, as opposed to broadly defining a service. The rule has the perverse effect of denying dispatch customers the full benefits of competition by imposing artificial constraints on cellular providers thereby making their provision of dispatch service needlessly inefficient.

¹⁰ See Presentation of Jeffrey R. Hultman, President and CEO of Dial Page, to Byron F. Marchant, Ralph Haller, et al., GEN Docket No. 90-314, filed April 13, 1994; see also Presentation of Justin Jaschke, President of CenCall, to Karen Brinkman, et al., GEN Docket No. 90-314, filed February 8, 1994.

preclude the cellular licensee from using its spectrum to provide dispatch in competition with the services offered by other CMRS providers. No public policy goal is served by allowing a single company to offer customers both cellular/CMRS common carrier service and traditional SMR dispatch service using separate licenses and separate allocations of spectrum, while at the same time prohibiting a cellular licensee from providing both services on a flexible basis.

B. The Provision of Dispatch Service by Common Carriers Will Not Adversely Effect Competition

As the Commission has recognized, competition should not be measured on a service-by-service basis.¹¹ Both consumers and service providers view the wireless marketplace as a whole reflecting the reality that CMRS services are substitutable across a broad range, and the willingness of wireless carriers offer various types of services in response to market demand.¹² Accordingly, the proper competitive analysis must include the entire wireless marketplace, not just a single service. Under such an analysis, permitting common carriers to provide dispatch service is clearly pro-competitive.

No one alleges that the SMR market is not competitive. Further, given the size of the largest SMR and ESMR operators,

¹¹ *Third Report and Order* at ¶¶ 14, 47, 56, and 64-67.

¹² Robert F. Roche, "Competition and the Wireless Industry" ("Roche Report") at 12 (copy attached hereto).

it is unlikely that any CMRS licensee will have a competitive advantage in the provision of dispatch service. Whether or not the traditional SMR industry becomes more concentrated, permitting all wireless providers to offer dispatch service will insure that dispatch will remain available from multiple sources.

III. The Cross Ownership Prohibition on Wireline Telephone Companies Holding SMR Licenses Should Be Eliminated

CTIA supports the Commission's proposal to eliminate the prohibition on wireline telephone companies holding SMR licenses. There is no basis for the rule and its elimination will enhance competition.

A. Regulatory Parity Requires Removal of the Cross-Ownership Restriction

Prior to the 1993 Budget Act amendments, Section 332(c) of the Communications Act set forth different regulatory schemes for similar land mobile services. Under the former regulatory rules, regulation was based on whether a service was "private" or "common carriage."¹³ While originally there may have been greater clarity to the distinction between "private" and "common" carrier wireless services, over time private carriers became indistinguishable from common carriers. By 1993, it was clear that both common and private

¹³ See CTIA Comments, GN Docket No. 93-252, filed November 8, 1993, at 4 ("CTIA Regulatory Parity Comments").

carriers were offering functionally equivalent services, but with each type of carrier "subject to inconsistent regulatory schemes."¹⁴

On August 9, 1994, pursuant to the Congressional mandate to review its rules for Commercial Mobile Radio Services, the Commission adopted the *Third Report and Order* which created new technical, operational, and licensing rules for all CMRS providers.¹⁵ The Commission determined that all CMRS services are similar,¹⁶ and concluded that "reclassified private mobile services actually compete or have the potential to compete within a reasonable period, with existing CMRS services."¹⁷

In adopting the *Third Report and Order*, the Commission failed to eliminate the restriction that prohibits wireline telephone companies, and their wireless affiliates, from holding SMR licenses. The wireline prohibition is unique to the SMR service and no comparable barriers to entry exist in other CMRS services. While SMR licensees may offer customers new services by obtaining new cellular, paging, and other

¹⁴ See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 259-60 (1993); see also CTIA Regulatory Parity Comments at 4.

¹⁵ *Third Report and Order* at ¶ 3 and n.5.

¹⁶ *Third Report and Order* at ¶¶ 10-12.

¹⁷ *Third Report and Order* at ¶ 12.

wireless licenses, wireless CMRS carriers who are affiliated with telephone companies may not obtain SMR licenses. This disparate and archaic restriction makes no sense in the context of the wireless industry's competitive framework, and is at odds with the principal of regulatory parity set forth in Section 332(c) of the Act. Accordingly, the cross-ownership restriction must be removed.

**B. Eliminating the Cross Ownership Restriction
Will Not Harm Competition**

The Commission has raised concerns over the impact that wireline telephone company entry will have on the SMR marketplace. CTIA agrees with the Commission's determination that removal of the cross ownership prohibition will benefit consumers by increasing competition.¹⁸

The Commission has concluded that all CMRS services are competitive¹⁹ and that SMR services compete with cellular and are likely to compete with PCS.²⁰ Further, all CMRS services are substitutable for one another.²¹ Accordingly, CTIA believes that SMR "dispatch" service does not constitute a

¹⁸ Notice at 15.

¹⁹ Second Report and Order at ¶ 137.

²⁰ Third Report and Order at ¶ 67.

²¹ Third Report and Order at ¶¶ 58-64, 67, 72-75.

separate market, but rather constitutes one facet of the broad range of CMRS services.

Because of the substitutability of wireless services, and because ESMR services are a competitive alternative to cellular and PCS, companies are "positioning themselves to compete in the broad wireless marketplace."²² Competition is no longer limited within a particular service but rather is determined by the wireless marketplace in general as customers look for the service that will best meet their needs.²³

SMRs currently compete with cellular carriers in the provision of wireless services. These cellular carriers often are affiliates of the wireline telephone companies, and therefore, are subject to the current restriction. However, many cellular carriers are not subject to the restriction because they are not owned by a wireline telephone company.²⁴ Further, the Commission has allowed cellular and wireline participation in PCS. Given this determination, there can be no basis for the Commission to continue to exclude only one sub-category of CMRS licensees from acquiring SMR licenses.

²² Roche Report at 4.

²³ *Id.* at 5 (quoting "Cellular-Mobilesat Union Gains Momentum," Mobile Satellite News, March 14, 1994).

²⁴ One of the anomalies of the current rule is that non-wireline cellular companies can, and do, hold SMR licenses in their cellular service areas, but wireline telephone companies, and their wireless affiliates, may not.

CTIA consistently has urged the Commission to refrain from adopting unwarranted eligibility restrictions because they are unnecessary to prevent anti-competitive behavior.²⁵ The Commission already has adopted a spectrum cap which limits the amount of PCS, cellular, and SMR spectrum that may be held by, or attributed to, a single entity.²⁶ While CTIA continues to believe that the spectrum cap is unduly restrictive given the structure of the CMRS market, it surely resolves any residual concerns that permitting the wireless affiliates of wireline telephone companies into SMR will dampen competition.

²⁵ See CTIA Comments, GN Docket No. 93-252, filed June 20, 1994, at 8.

²⁶ *Third Report and Order* at 238.

**C. Previous Reasons for the Restriction Have
Been Eliminated**

In 1986, the Commission implied that the wireline prohibition was originally adopted to ensure the private status of SMR systems.²⁷ This basis was removed by *NARUC v. FCC*,²⁸ which "clearly established the private status of SMR systems."²⁹ Accordingly, the Commission issued its *First Notice* regarding the elimination of the prohibition.³⁰

In 1992, the Commission acknowledged that the original basis for the rule had been eliminated.³¹ Nonetheless, the Commission retained the prohibition pending an opportunity "to evaluate fully the competitive potential of private land mobile providers vis-à-vis common carrier land mobile providers" and thereby "preserve a climate favorable to the

²⁷ *In the Matter of Amendment of Part 90 of the Commission Rules Governing Eligibility for the Specialized Mobile Radio Services*, PR Docket No. 86-3, Notice of Proposed Rule Making ("First Notice"), 51 Fed. Reg. 2910 (1986).

²⁸ *NARUC v. FCC*, 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976).

²⁹ *First Notice*, 51 Fed. Reg. at 2910.

³⁰ *Id.*

³¹ *In the Matter of Amendment of Part 90 of the Commission Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band*, PR Docket No. 86-3, Order, 7 FCC Rcd. 4398 (1992) ("Termination Order").

continued development of private land mobile competitors."³²
The 1993 Budget Act has now eliminated this rationale.

Pursuant to the 1993 Budget Act, the Commission amended its rules to ensure that similar services are accorded similar regulatory treatment. In order to eliminate regulatory disparities, the Commission adopted a broad definition for CMRS which was designed to "ensure symmetrical regulatory treatment of competing mobile service providers."³³ In this regard, the Commission determined that most SMR services shall be regulated as CMRS and treated as common carriers.³⁴ Accordingly, the Commission already has addressed the one basis on which the wireline prohibition was retained: "to evaluate fully the competitive potential of private land mobile services vis-à-vis common carrier land mobile providers."³⁵

D. There Is No Need for Additional Safeguards

CTIA urges the Commission to refrain from imposing additional regulatory safeguards if the wireline prohibition is eliminated as proposed. The Commission already has determined that existing accounting safeguards applicable to

³² *Termination Order*, 7 FCC Rcd. at 4399.

³³ *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Further Notice of Proposed Rule Making*, FCC 94-100, (released May 20, 1994) at ¶ 1.

³⁴ *Second Report and Order* at ¶¶ 90, 93.

regulated local exchange carriers are sufficient to protect against cross-subsidization and discriminatory pricing of CMRS services.³⁶ The FCC's determination that additional safeguards are not necessary for PCS licensees should govern SMR licensees as well. Moreover, after two full comment cycles, there is no record of abuse that would justify imposing additional safeguards.

³⁵ Termination Order, 7 FCC Rcd. at 4399

³⁶ See *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd. 7700, 7751 (1993); see also Notice at ¶ 27.

CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission eliminate the prohibition on the provision of dispatch service by common carriers and eliminate the restrictions that prevent wireline telephone companies, and their wireless affiliates, from holding SMR licenses.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**



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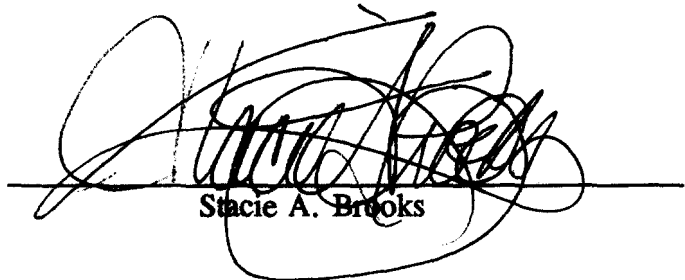
October 6, 1994

CERTIFICATE OF SERVICE

I, Stacie A. Brooks, certify that on this 6th day of October, 1994, a copy of the foregoing Reply Comments of Cellular Telecommunications Industry Association were served by hand delivery upon the following parties listed below:

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Stacie A. Brooks

CTIA



Building The Wireless Future™

Competition and the Wireless Industry

by

Robert F. Roche

Director for Research

Cellular Telecommunications Industry Association

Competition and the Wireless Industry

All branches of government have recognized that competition is not just an end in itself, but is valued for the ends it serves: increasing consumer welfare. Fundamental legal, regulatory and economic principles enshrine competition as a means of meeting consumer needs and preferences, promoting technological and service innovation, and ensuring affordable goods and services -- all things intended to benefit the consumer.

The wireless industry is dynamic and competitive. Wireless companies:

- Compete in a broad market, composed of many service providers.
- Constantly innovate, investing in technological and service developments.
- Strive to offer valuable goods and services to a broad and expanding population of users.

Market Structure and the Wireless Industry

The market structure of the wireless industry was originally designed to provide a modicum of competition, but the market itself is proving even more competitive than originally planned. Originally, the various segments of the wireless industry were created and defined separately -- but consumers and providers increasingly place them in the same market where many products and services are substitutable for each other.

Congress recognized this reality when it amended Section 332(c) of the Communications Act of 1934 to create the Commercial Mobile Radio Service classification, and established a policy of regulatory parity for these services.¹

The Converging Marketplace

The paradigm of a converging marketplace is now assumed in the plans of wireless service providers and industry analysts. Both Dial Page and CenCall, in presentations made to the FCC in the PCS proceeding, advanced visions of an integrated service market, composed of dispatch, paging/messaging, cellular/mobile telephony and mobile data users.²

¹See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Sec. 6002(b)(2)(A), 107 Stat. 312, 393 (1993).

²See Presentation of Mr. Jeffrey R. Hultman, President and CEO of Dial Page, to Mr. Byron F. Marchant, and Mr. Ralph Haller, *et al.*, GEN Docket No. 90-314 (filed April 13, 1994). See *also* Presentation of Mr. Justin Jaschke, President of CenCall,

Economic Management Consultants International (EMCI) also concluded that: **"As technology, regulation, and market structure change, paging, SMR, cellular, mobile data, and mobile satellite services will compete more heavily against one another."**³ Attached figures drawn from these presentations illustrate how the convergence of these market segments will introduce yet more competition to the marketplace, even as technological innovation blurs the differences among mobile services.

An End to Entry Barriers

The wireless marketplace is expanding rapidly, and historic structural limits to entry -- spectrum scarcity, limited numbers of licenses, and limited technological capabilities -- have rapidly eroded.

First, the Federal Communications Commission granted waivers to SMR companies to convert their systems to wide-area, digital "enhanced SMR" (ESMR) systems.⁴ In quick order, companies began to raise capital and acquire SMR licenses to create systems with broad service areas. ***The SMR consolidation which has occurred has facilitated an accelerated system build-out, with ESMR services now available in California, and other markets building-out well before analysts predicted they would be completed.***⁵

SMR Origins

The Specialized Mobile Radio (SMR) industry was created in 1974, and eventually allocated 19 MHz of spectrum (in the 800 and 900 MHz bands) in most markets. As of 1991, there were some 7,000 SMR companies operating in the U.S., and while consolidation has reduced that number, the existing SMR companies are positioning themselves to compete in providing voice, data and other wireless messaging services. As of year-end 1993, there were 1.5 million SMR customers -- a number expected to increase to 5.2 million customers by year-end 1998.

Sources: Fertig, *Specialized Mobile Radio* (FCC, 1991), and EMCI.

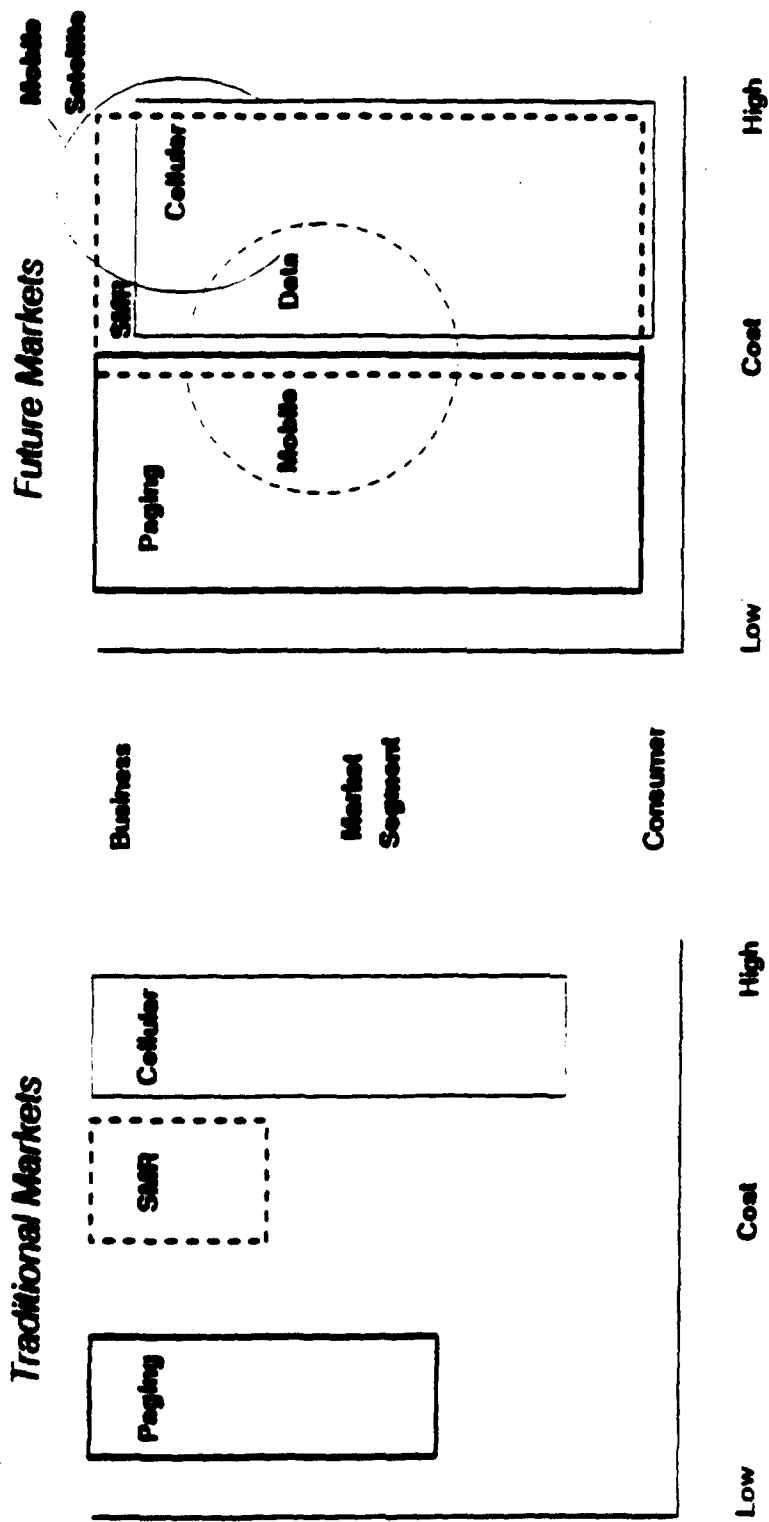
to Ms. Karen Brinkmann, *et al.*, GEN Docket No. 90-314 (filed February 8, 1994).

³See EMCI, "The Changing Wireless Marketplace," *Cellular Brief*, December 17, 1992, at p.3.

⁴See e.g., *Fleet Call, Inc.*, 6 FCC Rcd. 1533, *recon. dismissed*, 6 FCC Rcd. 6989 (1991). See also *American Mobile Data Communications, Inc.*, 4 FCC Rcd. 3802 (1989); Letter from Richard Shiben, Chief, Land Mobile and Microwave Division, Private Radio Bureau, to George Hertz, President, Advanced MobileComm of New England, Inc. (April 13, 1992); *Mobile Radio New England Request for Rule Waiver*, 8 FCC Rcd. 349 (1993).

⁵See Lynda Runyon *et al.*, Merrill Lynch Capital Markets *CenCall Communications Company Report*, January 19, 1994, at p.3.

Figure 1. Mobile Communication Target Markets, by Technology



Note: Excludes PCS.
Source: EMCi, Inc.